

United States

7

Circuit Court of Appeals

For the Ninth Circuit.

AMALGAMATED MEAT CUTTERS &
BUTCHER WORKMEN OF NORTH
AMERICA, LOCAL NO. 207,

Appellant,

vs.

WALTER P. SPRECKELS, individually, and as
Regional Director, 21st Region, of the National
Labor Relations Board,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United
States for the Southern District of California,
Central Division

FILED

DEC - 5 1940

PAUL P. O'BRIEN,

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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In the District Court of the United States, Southern
District of California, Central Division

No. 1076-Y Civil

AMALGAMATED MEAT CUTTERS &
BUTCHER WORKMEN OF NORTH
AMERICA, LOCAL NO. 207,

Plaintiff,

vs.

WALTER P. SPRECKELS, individually, and as
Regional Director, 21st Region, of the National
Labor Relations Board,

Defendant.

COMPLAINT FOR INJUNCTION

Plaintiff, Amalgamated Meat Cutters & Butcher
Workmen of North America, Local 207, for cause
of action against the defendant, alleges:

I.

That it is a duly organized and existing labor
organization affiliated with the American Federa-
tion of Labor.

II.

That the defendant, Walter P. Spreckels, is the
Regional Director for the 21st Region of the Na-
tional Labor Relations Board, and agent in charge
of its office in Los Angeles, California.

III.

That the matters complained of herein affect the
conduct and operation of Interstate Commerce.

IV.

That on or about October 19, 1938, an election was conducted under the direction and auspices of the National Labor Relations Board, at which plaintiff was chosen as the exclusive bargaining agent for the plant employees of Cudahy Packing Company plant at Los Angeles, California, most of whom were then and now [2] are members of local 207. That plaintiff having been certified by said Board did, on behalf of its members and of the employees in said plant, negotiate a contract governing the hours, wages and working conditions of said employees, which said contract is dated November 2, 1939, and by its terms made binding between the parties until October 24, 1940. That a true copy of said contract is annexed hereto, marked Exhibit "A" and hereby made a part hereof.

That ever since said November 2, 1939, said contract has been and now is a valid and binding contract.

V.

That immediately upon the signing and execution of said contract between the parties thereto, the said employer and the plaintiff and the employees of said plant entered upon the performance of said contract and said employer and said employees, and the plaintiff did continue to operate under and perform in good faith the terms of said contract until the operation thereof was wrongfully interfered with by the defendant, Walter P. Spreckels, purporting to act as agent of the National Labor

Relations Board, more particularly as the Regional Director of said Board for the 21st Region thereof.

VI.

That purporting to act as director of said National Labor Relations Board for the 21st Region thereof, but in truth and in fact acting by color of office only, and beyond and in excess of his authority as Regional Director of the said National Labor Relations Board, the defendant himself, and through his agents, did wrongfully intimidate and cause said employer and numerous employees of said plant who were and are members of plaintiff, and embraced within said contract, from the performance of said contract, and from complying with the full obligations and enjoying the full benefits thereof. That the said Walter P. Spreekels, and his agents, notified the parties thereto in [3] substance and effect that said contract was void, by publishing notices of hearings to be held by agents purporting to act as agent of the National Labor Relations Board, and by giving of notices of an election to be conducted by the said defendant for the alleged purpose of selecting a collective bargaining agent for the employees under said contract, and by authorizing and encouraging one Harry Bridges, and others who claimed to be affiliated with the labor organization known as the C. I. O., to declare and proclaim to said employees that said contract was void, and that the National Labor Relations Board and defendant Spreekels would select an ex-

clusive bargaining agent to represent and bargain for said employees.

VII.

That the acts of defendant complained of in the foregoing paragraph were without justification or excuse in law or in fact, and that such acts caused, and were intended to defendant to cause, the plaintiff to suffer, as a direct result thereof, the loss of a large number of its members and the loss of a large sum of dues that accrued to plaintiff, and caused plaintiff to expend large sums of money in resisting said wrongful acts of the defendant; and that said acts of defendant have further injured the plaintiff by enabling benefits accruing under the said contract to employees represented by the plaintiff.

VIII.

That subsequently, on March 14, 1940, at the behest and upon the representation of the said defendant, the National Labor Relations Board did conduct a hearing in said premises at Washington, D. C., and that the defendant caused said board to take other steps in violation of the contract rights of the plaintiff, by causing an order to be issued that an election be held among the eligible plant employees of said Cudahy Packing Company plant at Los Angeles, California, who were then and there legally [4] represented by the plaintiff, and that the said Regional Director did, by various notices and statements, notify said employees at said plant in substance and effect that said plaintiff was not

their legally constituted and acting exclusive collective bargaining agent, and that the said plaintiff was not authorized to act as collective bargaining agent for the said employees.

IX.

Plaintiff is informed and believes, and upon such information and belief alleges, that subsequent to the said purported election and certification that the said C. I. O. is the exclusive bargaining agent, the defendant and his agents advised and encouraged the said C. I. O. to negotiate a new and different contract between the said Cudahy Packing Company and itself for and on behalf of the employees of said plant. Plaintiff is informed and believes, and upon such information and belief alleges, that the defendant will continue by various and similar acts to further interfere with the performance of the contract now in force and effect as above mentioned, and, that unless restrained by this Honorable Court, will entirely vitiate all of the contract rights accruing to said employees and said plant operating under and by virtue of the terms of the contract hereinabove mentioned, and that the plaintiff, through said acts by the defendant, has suffered loss of prestige and humiliation by the said unwarranted and illegal acts of the defendant, and will, unless defendant is restrained, continue to so suffer.

X.

That plaintiff has been put to the expense of employing its agents and attorneys in resisting the

said illegal acts and interference upon the part of the defendant, and will, unless he be restrained, be put to further and additional expense in the premises. [5]

XI.

That plaintiff has no plain, adequate and complete remedy at law.

Wherefore, plaintiff prays that the defendant be ordered to appear and show cause, if any he has, why he shall not be enjoined and restrained, pending the final determination of the above entitled action, from issuing, authorizing or publishing any statements interfering with, or tending to interfere with, the full and complete performance by the Cudahy Packing Company and Local 207, Amalgamated Meat Cutters & Butcher Workmen of North America, and the certain employees of the Cudahy Packing plant at Los Angeles, California, covered and embraced within the contract of employment dated November 2, 1939, between said Cudahy Packing Company and said Local 207, Amalgamated Meat Cutters & Butcher Workmen of North America, and from holding any hearing or election for the selection of collective bargaining agent, or any certification or designation as collective bargaining agent for said employees, or from taking any other or further steps, directly or indirectly, or through their agents, servants or employees, tending to or having the effect of interfering with, obstructing, intimidating, coercing or influencing the said Cudahy Packing Company, or

the said Local 207, Amalgamated Meat Cutters & Butcher Workmen of North America, or the said employees of Cudahy Packing plant at Los Angeles, California, embraced within the terms of said contract dated November 2, 1939, from adhering to the terms of said contract, or from the full performance thereof; and that pending the hearing on said order to show cause the defendant be temporarily enjoined and restrained from issuing, authorizing or publishing any statements interfering with, or tending to interfere with, the full and complete performance by the Cudahy Packing Company and Local 207, Amalgamated Meat Cutters & Butcher workmen [6] of North America, and the certain employees of the Cudahy Packing plant at Los Angeles, California, covered and embraced within the contract of employment dated November 2, 1939, between said Cudahy Packing Company and said Local 207, Amalgamated Meat Cutters & Butcher Workmen of North America, and from holding any hearing or election for the selection of collective bargaining agent, or any certification or designation as collective bargaining agent for said employees, or from taking any other or further steps, direct or indirectly, or through their agents, servants or employees, tending to or having the effect of interfering with, obstructing, intimidating, coercing or influencing the said Cudahy Packing Company, or the said Local 207, Amalgamated Meat Cutters & Butcher Workmen of North America, or the said employees of Cudahy Packing plant at Los

Angeles, California, embraced within the terms of the said contract dated November 2, 1939, from adhering to the terms of said contract, or from the full performance thereof; that plaintiff may have such other and further relief as to the Court may seem just, meet and equitable in the premises.

W. I. GILBERT,
939 Rowan Building,
Los Angeles, Calif.

REDMOND S. BRENNAN,
Dwight Building,
Kansas City, Mo.

By W. I. GILBERT,
Attorneys for Plaintiff.

State of California,
County of Los Angeles—ss.

William Wilson, being by me first duly sworn, deposes and says:

That he is the secretary of Local 207, Amalgamated Meat Cutters & Butcher Workmen of North America, the plaintiff in the above entitled action; that he has read the foregoing complaint and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information or belief, and as to those matters that he believes it to be true.

WILLIAM WILSON.

Subscribed and sworn to before me this 20th day of July, 1940.

(Seal) LILLIAN RAY,

Notary Public in and for the County of Los Angeles, State of California. [7]

EXHIBIT "A"

MEMORANDUM OF AGREEMENT BY AND BETWEEN THE CUDAHY PACKING COMPANY OF THE LOS ANGELES, CALIFORNIA PLANT, MEMBERS OF LOCAL 207 OF THE AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFFILIATED WITH THE AMERICAN FEDERATION OF LABOR.

Local 207 of the Amalgamated Meat Cutters and Butcher Workmen of North America has the following officers: President, Vice-President, Recording Secretary, Financial Secretary-Treasurer and a Board of Trustees consisting of three Cudahy employees. The Grievance Committee consists of seven Cudahy employees who are appointed by the President of the Local. There are also Departmental Stewards in each Department.

All officers and members of Local 207 must be exclusively employees of the Cudahy Packing Company's Los Angeles Plant, with the exception of the Financial Secretary-Treasurer, who is also the Business Agent.

1. The Cudahy Packing Company, hereinafter called the Company, does hereby recognize Local

207 of the Amalgamated Meat Cutters and Butcher Workmen of North America, affiliate of the American Federation of Labor, hereinafter called the Union, as the Sole Collective Bargaining Agency for the employees at the Los Angeles Plant, exclusive of employees in a supervisory capacity, drivers, time study men, watchmen, deputized officers and employees on the office and salesmen's payrolls. This exclusion shall apply to all employees referred or covered by this agreement.

2. It is agreed eight consecutive hours shall be the basic work day. All time worked over ten hours in any one day or over forty-two hours in any one week shall be paid at the rate of time and one-half, but there shall be no duplication of overtime. The matter of the use of Tolerance Weeks may be finally opened for discussion and adjustment in accordance with the final ruling of the Administrator of the Fair Labor Standards Act of 1938. In any event, Tolerance Weeks shall not exceed fifty-three (53) hours in any one week and ten (10) hours in any one day.

3. In order to assure to the respective parties the benefits intended to be derived by the Company and the employees from this agreement, the Company agrees to retain in its employ none other than members of Local 207 of the Amalgamated Meat Cutters and Butcher Workmen of North America. Said members must be in good standing in said Local at all times. New employees shall become members of said Local 207, of the A.M.C. & B.W. of N.A.

within fifteen days after employment by the Company and remain in good standing at all times.

4. Employees shall not be required to work more than five hours without time off for lunch, except in cases of mechanical breakdowns and continuous operation of five and one-half ($5\frac{1}{2}$) hours on kill out or cut outs. Chain operations and conveyors shall not be required to work more than two and one-half ($2\frac{1}{2}$) hours without a ten minute relief period.

5. Two hour pay is the minimum pay any employee shall receive for responding to any call for duty by the employer. All mechanics when called to work shall receive not less than three (3) hours pay.

6. All employees other than shift men and those engaged in continuous operations working on New Year's Day, Decoration Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, Armistice Day or Sunday, shall be compensated at a double time rate, except employees who work nights and whose work week begins Sunday and ends Saturday shall not *ne* so compensated. [8]

7. Wages paid shall be at least comparable with established rates paid for similar work in comparable packing houses in Los Angeles County. In any contemplated change in basic rates of pay, a ten day written notice shall be given by the one party to the other for the purpose of negotiating the change or changes.

8. All regular employees shall receive a guaranteed time of thirty-two hours per week, provided

lay-offs may take place up to and including the third workday of the work week, in which case, said guarantee shall not be effective for those employees laid off. It is also agreed that, when there is work to be performed after the third day in a department, regular employees of that department must be called for duty.

9. All employees who have completed two years of continuous service shall be entitled to one week's vacation with pay and those who have completed five years continuous service shall be entitled to two weeks' vacation with pay. The amount to be paid employees during vacaton periods shall be based on their weekly average hours worked during the four weeks immediately preceding their vacations (such hours not to exceed 40 nor be less than 32) at their basic day work rate of pay. Where an employee works on more than one job during the four weeks mentioned, for which different rates are paid, the amount of payment will be figured according to the method now used by the Company. Power Department Shift men and empoyees engaged in wholesale distribution, whose basic work-week is 42 hours, will be paid on the basis of the hours worked during the four weeks' period prior to vacations, such hours not to exceed 42 nor be less than 32.

10. After six months continuous service with the Company, seniority shall prevail for all employees below the grade of assistant foreman. In any reduction of the number of employees, and in rehiring seniority rights shall govern. In any lay-offs

the youngest employees in point of service shall be the first to be laid off, and in re-hiring, the one last laid off shall be the first to be re-hired. In case of all lay-offs and re-employment seniority as to department shall prevail and employment shall be given to all unemployed members of Local 207 in preference to new help in any department. In all Departmental changes involving jobs with a higher rate of pay, consideration shall be given to employees of that department holding seniority. Seniority rights of employees shall not be effected by temporary lay-offs not exceeding a period of sixty (60) days. During such time, and employee will be subject to re-call when required for service and failing to report within 24 hours after reasonable notice has been given that the Company desires his service after which he will be considered as having terminated his service with the Company. In case of absence from work due to accident or illness, seniority rights shall not be lost if the absent employee member of the Union notifies the Company within 48 hours and thereafter at intervals of 10 days and after recovery from said accident or illness, shall furnish a doctor's certificate to the effect that such absence was necessary provided, however, that if no doctor attended the absent employee member, such employee member of the Union shall have the right to furnish other suitable proof that such absence was necessary.

11. Employees attending Union Conventions or other similar meetings upon giving reasonable no-

tice to the management, shall be permitted to absent themselves for a reasonable length of time and without pay as long as such absence from the plant does not unduly interfere with the operation of the plant. [9]

12. In the event of any dispute arising relative to any of the provisions of this agreement, the matter shall be arbitrated as follows: The Company, or Employer, shall choose two persons, the Union shall choose two persons, and these four shall choose a fifth person and all five shall act as a Board of Arbitration. The Board of Arbitration shall make its decision within fifteen days. The decision of the Board of Arbitration shall be final and shall be accepted as such by both the Company and the Union; however, if either party feels that such decision is not justified, they shall be allowed the privilege of an appeal within fifteen days to any authorized agency or court of competent jurisdiction they desire.

13. It is agreed that either party will have the right to serve the other party with a ten day written notice that negotiations are desired to open the question of conditions enumerated in this agreement. When such changes are desired by either party, conferences upon same will be held at the office of the Company in Los Angeles, unless otherwise mutually agreed.

14. Should differences arise between the Company and the Union or its members employed by the

Company, as to the meaning or application of the provisions of this agreement, or should trouble of any kind arise in the plant, there shall be no cessation or suspension of work on account of such differences, but the same shall be settled as provided in this agreement.

15. This agreement shall be in full force and be binding upon both parties until October 24th, 1940. This agreement shall automatically renew itself from year to year unless terminated by a 30 day notice in writing by either party,

Approved:

THE AMALGAMATED MEAT CUTTERS
AND BUTCHER WORKMEN OF N. A.
AFFILIATE OF THE AMERICAN FED-
ERATION OF LABOR.

(Seal)

Signed T. J. LLOYD,

Int. Vice President.

LOCAL UNION #207, OF THE AMALGA-
MATED MEAT CUTTERS AND BUTCHER
WORKMEN OF N. A. AFFILIATE OF
THE AMERICAN FEDERATION OF
LABOR.

Signed JOHN CARROLL,

President.

DAVE STRATTON,

Secretary-Treasurer. [10]

The Cudahy Packing Company
803-811 Macy Street
Box 280 Arcade Station
Los Angeles, California.

November 2, 1939.

Mr. John Carroll, President
Local 207, Amalgamated Meat Cutters
& Butcher Workmen of North America,
Affiliate of the American Federation
of Labor.

Dear Sir:

Receipt is acknowledged of your Memorandum of Agreement dated October 24, 1939.

It shall be the policy of this Company to operate in accordance with the provisions set forth in said agreement, provided; however, that no conditions in Paragraph 3 or elsewhere in the agreement, shall require this Company to take any action which its counsel may advise is contrary to the provisions of the Wagner Act or any State or Federal law; and the *the* further provision that the Company shall not be required to compensate Grievance Committee Members or other Union Officials who are employees, for more than three hours in any one week, for time spent on grievances or other Union matters, during regular working hours.

Yours very truly,

THE CUDAHY PACKING
COMPANY

C. A. ROBERTS

CAR:SM

General Manager.

[Endorsed]: Complaint. Filed Jul. 22, 1940.

[Title of District Court and Cause.]

ORDER TO SHOW CAUSE AND TEMPORARY
RESTRAINING ORDER

Upon reading and filing the verified complaint herein, and good cause appearing therefor,

It is ordered, that the defendant be and appear before the above entitled court in the Court Room of the Honorable Leon R. Yankwich, in the United States Post Office Building, in the City of Los Angeles, County of Los Angeles, State of California, on the 30th day of July, 1940, at the hour of 10 o'clock A. M., or as soon thereafter as counsel may be heard, to show cause, if any he has, why he should not be enjoined and restrained, pending the final determination of the above entitled action, from issuing, authorizing or publishing any statements interfering with, or tending to interfere with, the full and complete performance by the Cudahy Packing Company and Local 207, Amalgamated Meat Cutters & Butcher Workmen of North America, and the certain employees of the Cudahy Packing plant at Los Angeles, California, covered and embraced within the contract of employment dated November 2, 1939, between said Cudahy Packing Company and said Local 207, Amalgamated Meat Cutters & Butcher Workmen of North America, and from holding any hearing or election for the selection of collective bargaining agent, or any certification or designation as collective bargaining [12] agent for said employees, or from taking any other or further steps, direct or indirectly,

or through his agents, servants or employees, tending to or having the effect of interfering with, obstructing, intimidating, coercing or influencing the said Cudahy Packing Company, or the said Local 207, Amalgamated Meat Cutters & Butcher Workmen of North America, or the said employees of Cudahy Packing plant at Los Angeles, California, embraced within the terms of the said contract dated November 2, 1939, from adhering to the terms of said contract, or from the full performance thereof.

It is further ordered, that a copy of the foregoing [13] order to show cause shall be served upon the defendant at least 5 days prior to the said hearing.

Dated at Los Angeles, California, this 22nd day of July, 1940.

LEON R. YANKWICH,
Judge of the District Court of the United States,
Southern District of California, Central Division.

POINTS AND AUTHORITIES

Courts will interfere for the purpose of protecting property rights of members of unincorporated associations, in all proper cases, and when they take jurisdiction, will follow and enforce, so far as applicable, the rules applying to incorporated bodies of the same character.

Otto v. Journeymen Tailors' Protective and Benevolent Union, 75 Cal. 308.

The holder of a personal right of membership is protected against any unauthorized act or proceeding on the part of his fellow members, either as individuals, or in their official or collective capacity, by which his enjoyment of such right will be impaired or destroyed. Whenever it is sought to deprive him of his membership, he has the right to insist upon a strict observance of the proceedings therefor prescribed in its constitution or articles of association, and such by-laws or rules of conduct as have been adopted under its provisions.

Dingwall v. Amalgamated Association of
Street Railway Employees, 4 C. A. 565;
Lawson v. Hewell, 118 Cal. 613. [14]

When the fact of membership has once been established, the court will, where proper rights are involved, restrain the violation of the rules covering voluntary associations at the behest of anyone who has suffered injury by such violations.

Greenwood v. Building Trades Council, 71 C.
A. 159.

An unincorporated labor union may sue and be sued without naming its members in the Federal Court.

United Mine Workers of America v. Cor-
onado Coal Co., 250 U. S. 344.

[Endorsed]: Filed Jul. 22, 1940. [15]

[Title of District Court and Cause.]

MOTION TO DISMISS COMPLAINT

Now comes the defendant Walter P. Spreckels, individually and as "Regional Director, 21st Region" and moves the court to dismiss the Bill of Complaint herein, and, as reasons therefor, assigns the following:

1. It appears on the face of the complaint that this is an action to enjoin defendant Walter P. Spreckels, a subordinate local agent of the National Labor Relations Board, to-wit, Regional Director of the 21st Region, from the performance of any acts in connection with a proceeding arising under an Act of Congress, the National Labor Relations Act (49 Stat. 449; 29 U. S. C. A., Sec. 151 et seq.), said proceeding being entitled before the Board, "In the matter of Cudahy Packing Company and Packing House Workres Organizing Committee, C. I. O.", being the Board's Case No. 1718. Said proceeding, in which plaintiff herein appeared and was represented by counsel, was one for the investigation and certification of representatives pursuant to Section 9 (c) of said Act, in the course of which proceeding, a Decision and Direction of Election was issued by said Board from Washington, D. C., for the purpose of determining whether the employees of Cudahy Packing [16] Company in the unit therein involved, desired to be represented for the purposes of collective bargaining by Amalgamated Meat Cutters and Butcher Workmen of

North America, A. F. L. Local No. 207, plaintiff herein, or by another labor organization called United Packing House Workers of America, Local No. 107, C. I. O. A copy of said Decision and Direction of Election is hereto annexed and marked "Appendix A". Pursuant to said Direction of Election, an election was duly held and a count of the ballots showing that a majority of the votes cast being in favor of the United Packing House Workers of America, Local No. 107, C. I. O., the Board, pursuant to the powers vested in it under Section 9(c) of said Act, did on June 6th, 1940, issue from Washington, D. C., its formal Certification of Representatives, copy of which is hereto annexed, marked "Appendix B", certifying the said United Packing House Workers of America, Local 107, as the representative for purposes of collective bargaining of the employees in the unit in question. With the issuance of said formal Certification of Representatives, the proceeding before the Board was and is at an end, the investigation completed and there is nothing further which is to be done or can be done by the Board or Walter P. Spreckels, as Regional Director, or individually in said proceeding.

2. Said proceeding is one arising under the National Labor Relations Act, the procedure therein provided for is exclusive, and the United States District Court has no jurisdiction over the subject matter thereof and is without jurisdiction to enjoin the Board or its agents in the performance of

the functions vested in the Board under the National Labor Relations Act.

3. The complaint on its face shows that plaintiff is not threatened with or in danger of suffering any great irreparable or immediate injury entitling it to injunctive relief.

4. The remedies for any of the matters set forth in the complaint can only be sought under the procedure provided [17] for in the National Labor Relations Act, which provides for a full, adequate and complete remedy for the matters complained of. That plaintiff has failed to exhaust said administrative remedies under the Act.

5. This defendant Walter P. Spreckels is but a subordinate of the National Labor Relations Board, to-wit, the Regional Director of the 21st Region with limited powers. With the holding of the election and the rendition to the Board on May 17, 1940, of his report of the results of the election, as recited in the Board's certification hereto annexed as Appendix B, this defendant Walter P. Spreckels completely discharged all of his official duties in said proceeding, and this defendant Spreckels has no further duties, powers, or functions in connection with said proceeding. There is, therefore, nothing which this defendant Spreckels can possibly do in connection with said proceeding and there is nothing to enjoin with respect to him.

6. The Board having issued its certification, the proceeding is completed and there is nothing to enjoin with respect to the Board or this defendant.

If the Board had any further functions to perform, only the Board and not this defendant, as a subordinate agent could perform them. It therefore appears on the face of the bill that the matters here sought to be enjoined are those which only the Board and not this defendant can perform. This Court has no jurisdiction over the National Labor Relations Board, because the Board is an administrative agency constituting a part of the executive branch of the United States Government, which cannot be sued except by special act of the Congress of the United States. No such act has been passed. The bill must therefore be dismissed for lack of jurisdiction over an indispensable party.

7. The certification of the Board does not entail any compulsory process which the Board can invoke. It is [18] not a command or an order but a mere certification of fact. Should it be disregarded by the Cudahy Packing Company, the Board could take no steps whatever until a charge should first be filed with it under Section 10 (b) of the Act against Cudahy Packing Company. Even thereafter the Board would have no compulsory powers. All it could do would be to issue a complaint under Section 10 (b) of the Act charging the Cudahy Packing Company with the commission of unfair labor practices and notice the same for hearing. At such hearing, the plaintiff would have the right to intervene and raise the various matters which it seeks to raise here. Thereafter the Board may issue its decision pursuant to Section 10 (c) of the

Act, and, if it finds Cudahy Packing Company guilty of unfair labor practices, may order it to cease and desist from such practices, and, if one of the unfair labor practices is refusal to bargain with the labor organization certified, may direct it to bargain with such labor organization, the Board would have no power to compel obedience to its order, if issued. To compel obedience to its order, the Board would be obliged to petition to the United States Circuit Court of Appeals pursuant to Section 10 (e) of the Act for the enforcement of its order. The plaintiff would have the right either to intervene in said proceeding or to file under Section 10 (f) of the Act a petition to the said Circuit Court of Appeals under Section 10 (f) of the Act to review and set aside the order of the Board. On the Board's petition to enforce or the plaintiff's petition to review, the validity of the certification of representatives would be put in issue under Section 9 (d) of the Act, which provides as follows:

Whenever an order of the Board made pursuant to Section 10 (e) is based in whole or in part upon facts certified following an investigation pursuant to subsection (c) of this section, and there is a petition for the enforcement or review of such order, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under subsections 10 (e) or 10 (f), and thereupon the decree of the court enforcing, modifying, or setting aside in

whole or [19] in part the order of the Board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript.

The plaintiff under the procedure of the National Labor Relations Act therefore has a full, adequate and complete remedy for any of the matters complained of in the complaint.

2. Defendant Spreckels further moves that this Bill of Complaint be dismissed for the reason that the cause herein is *res adjudicata*. On July 1, 1940, plaintiff herein filed a Bill of Complaint in this Court entitled "Amalgamated Meat Cutters & Butcher Workmen of North America, Local No. 207, v. National Labor Relations Board and Walter P. Spreckels, Regional Director, 21st Region", No. 1052-H Civil. Upon consideration of the verified Bill of Complaint, motions to dismiss on behalf of defendant Spreckels and motion to quash summons on behalf of the National Labor Relations Board, Honorable Ben Harrison, Judge, United States District Court, Southern District of California, entered a decree on July 15, 1940, dismissing the bill, quashing the summons and dissolving the temporary restraining order theretofore issued. Save and except for the inclusion of the National Labor Relations Board as a party and the bringing of the bill against Walter P. Spreckels both in his official and individual capacities, the two bills are identical, the entire subject matter of the litigation is the

same, the object to be accomplished by the bill in that case is the same as the object sought to be accomplished by the bill in the present case.

Wherefore defendant Walter P. Spreckels, individually and as "Regional Director, 21st Region" respectfully prays for an order dismissing the complaint herein.

WM. R. WALSH,
Regional Attorney 21st Region, appearing for defendant Walter P. Spreckels, Regional Director, 21st Region, 808 U. S. Post Office & Court House, Los Angeles, California.

[Endorsed]: Filed Jul. 29, 1940. [20]

EXHIBIT "A"

United States of America

Before the National Labor Relations Board

In the Matter of

CUDAHY PACKING COMPANY and PACK-
ING HOUSE WORKERS ORGANIZING
COMMITTEE, C. I. O.

Case No. R-1718.

Decided April 17, 1940

Meat Packing Industry—Investigation of Representatives: controversy concerning representation of employees: rival unions; second closed-shop contract entered into between rival union victorious in

a consent election held the year before and the Company, where petition filed prior to making of second contract, petitioner notified Company of majority claim, and at hearing made showing sufficient to rebut showing of majority by contracting union at time of execution of second contract, no bar to—Labor Organization: on an issue raised, petitioner is found to be a labor organization on the basis of the testimony—Unit Appropriate for Collective Bargaining: all employees of the Company on the plant payroll at its Los Angeles plant including receiving clerks, departmental clerks, route clerks, shipping clerks, scalers, and checkers, but excluding supervisory employees, subforemen, department superintendents, timekeepers, time-study men, deputized officers, all other watchmen wherever located, drivers, the hide take-up gang, Kern County employees, and all employees on the office pay roll—Election Ordered.

Mr. Alba M. Martin and Mr. M. A. Prowell, for the Board.

Howlett and Maclaren, by Mr. Elmer H. Howlett and Mr. Towson Maclaren, of Los Angeles, Calif., for the Company.

Gallagher, Wirin, and Johnson, by Mr. Grover Johnson, of Los Angeles, Calif., and Mr. A. J. Shippey, of Los Angeles, Calif., for the P. W. O. C.

Mr. Joseph Padway and Mr. Herbert Thatcher, of Washington, D. C.; Mr. T. J. Lloyd, of Salt Lake City, Utah; Mr. J. F. Voorhees and Mr. John

Carroll, of Los Angeles, Calif., for the Amalgamated.

Mrs. Augusta Spaulding, of counsel to the Board.

DECISION
and
DIRECTION OF ELECTION

Statement of the Case

On October 17, 1939, Packing House Workers Organizing Committee, C. I. O., herein called the P. W. O. C., filed with the Regional Director for the Twenty-first Region (Los Angeles, California) a petition alleging that a question affecting commerce had arisen concerning representation of employees of Cudahy Packing Company, [21] Los Angeles, California, herein called the Company, and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, herein called the Act.

On December 22, 1939, the National Labor Relations Board, herein called the Board, acting pursuant to Section 9 (c) of the Act and Article III, Section 3, of National Labor Relations Board Rules and Regulations—Series 2, ordered an investigation and authorized the Regional Director to conduct it and to provide for an appropriate hearing on due notice.

On January 10, 1940, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company, the P. W. O. C., and upon Amalgamated Meat Cutters and Butcher Workmen

of North America, A. F. of L., Local No. 207, herein called the Amalgamated, a labor organization claiming to represent employees directly affected by the investigation.¹ On motion of the Company for a continuance the Regional Director issued an amended notice of hearing on January 16, 1940, copies of which were duly served on the same parties. Pursuant to the notice, a hearing was held on January 25, 26, 29, 30, and 31, 1940, and February 3, 5, 6, 7, 8, 9, and 12, 1940, at Los Angeles, California, before Earl S. Bellman, the Trial Examiner duly designated by the Board. The Board and the Company were represented by counsel, the P. W. O. C. and the Amalgamated by counsel and union officials, and all participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties.

At the commencement of the hearing the Company moved to dismiss the proceedings on the ground that a contract entered into on November 2, 1939, between the Amalgamated and the Company was a bar to the present proceeding. The Trial Examiner did not rule on this motion. For the reasons set forth in Section III below, the motion is hereby denied. The P. W. O. C. moved that the Board take judicial notice that the P. W.

¹Service of notice of hearing was also made upon Central Labor Council and Los Angeles Industrial Union Council. Neither of the organizations appeared at the hearing.

O. C. is a labor organization. Since the record establishes this fact, it is unnecessary to rule on this motion. During the course of the hearing the Trial Examiner made several rulings on other motions, objections to the admission of evidence, and the form of questions. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

On March 14, 1940, pursuant to notice duly served on all parties, a hearing was held before the Board at Washington, D. C., for the [22] purposes of oral argument. The Amalgamated appeared and presented its argument. The Company and the P. W. O. C. did not appear. The Amalgamated and the P. W. O. C. filed briefs which the Board has considered.

Upon the entire record in the case, the Board makes the following:

Findings of Fact

I. The Business of the Company

Cudahy Packing Company was incorporated in Maine in 1915. It is chiefly engaged in the purchase and slaughter of livestock and the processing and marketing of the products therefrom. Through its own operations and the operations of a number of subsidiaries whose stock it owns in whole or in part, it is engaged in the business of refining vegetable oils, manufacturing soap and other cleansing materials, pulling, scouring, combing wool, and

mining, producing, and distributing salt. It owns, maintains, and operates approximately 1500 refrigerator and 44 tank cars for the transportation of its products.

The respondent maintains slaughtering and meat-packing plants in Omaha, Nebraska; Kansas City, Kansas; Sioux City, Iowa; Los Angeles, California; Wichita, Kansas; North Salt Lake, Utah; Jersey City, New Jersey; Newport, Minnesota; San Diego, California; Denver, Colorado, and Albany, Georgia. It owns and operates soap and Old Dutch Cleanser factories at East Chicago, Indiana, and Toronto, Ontario, Canada; maintains shops for the construction and repair of refrigerator cars at East Chicago, Illinois; maintains a shop for refining vegetable oils near Memphis, Tennessee; operates a wool scouring, combing, and storage plant at Providence, Rhode Island; and owns and operates a salt mine and refinery at Lyons, Kansas. The respondent maintains 80 branch produce collecting and processing plants scattered throughout the United States.

The Company's meat packing plant at Los Angeles, California, is the only plant involved in this proceeding. For this plant more than 146 million pounds of livestock were purchased in 1939, about 40 per cent of which came from States other than California. From this livestock over 126 million pounds of meat products and other products were processed or manufactured, about 10 per cent of which was shipped to destinations outside Califor-

nia by rail, steamship, or other common carrier. About 8 million pounds of Old Dutch Cleanser were manufactured at this plant during 1939, about 20 per cent of which was shipped to other States, Hawaiian Islands, Philippine Islands, and the Orient.

[23]

II. The Organizations Involved

Packing House Workers Organizing Committee is a national labor organization affiliated with the Congress of Industrial Organizations. It organizes packing-house workers and charters local unions whose membership is comprised of such workers. It acts as bargaining agent for packing-house employees and such local unions.

United Packing House Workers of America, Local No. 107, is a labor organization chartered by Packing House Workers Organizing Committee, and through it affiliated with the Congress of Industrial Organizations. It admits to membership all employees of the Company's plant at Los Angeles, California, excluding persons with the power to hire and discharge, recommend hiring and discharging, and those coming under the jurisdiction of other C. I. O. unions.

Amalgamated Meat Cutters and Butcher Workmen of North America, A. F. of L., Local No. 207, is a labor organization affiliated with the American Federation of Labor. It admits to membership employees of the Company's plant at Los Angeles, California, excluding clerical and supervisory employees, watchmen, and deputized watchmen.

III. The Question Concerning Representation

On October 19, 1938, a consent election was conducted under the auspices of the Board's Regional Office among the Company's employees to determine whether they desired to be represented by the Amalgamated or by a then existing local of the P. W. O. C. for the purposes of collective bargaining or by neither. The Amalgamated received a majority of the votes cast.²

On November 18, 1938, the Company and the Amalgamated exchanged certain documents which are alleged to have constituted a contract.³ We assume, without deciding, that these documents constituted a contract and shall refer to them as such hereinafter. By its terms this contract was to expire on October 24, 1939. It also contains a closed-shop provision. The Company consistently refused to enforce this provision, although often urged to do so by officers of the Amalgamated, allegedly because it doubted the validity of such a provision under California law.⁴ While the Company's po-

²Out of 685 ballots counted in the election the Amalgamated received 367 votes and the P. W. O. C. local received 291.

³These documents are similar in form and general content to documents exchanged on November 2, 1939, which are discussed below.

⁴There was testimony that cases are pending in California courts testing the validity of a closed-shop contract under Section 821 and 823 of the Labor Code of California.

sition that it would not enforce the closed-shop provision was clear to the officers of the Amalgamated, the generality of employees believed that membership in the Amalgamated was a condition of employment. In [24] January 1939 the P. W. O. C. revoked the charter of its local, under the belief that the Company was enforcing the closed-shop provision of the contract between the Company and the Amalgamated.

In August 1939 the P. W. O. C. began a new drive to organize the employees of the Company. In October the Amalgamated started negotiations with the Company looking toward a new contract, in view of the approaching expiration of the existing contract on October 24, 1939. On October 16, 1939, the District Director of the P. W. O. C., accompanied by a national officer of that union, had an interview with the Company's plant manager and superintendent. At that meeting the P. W. O. C. representatives asked whether the P. W. O. C. would receive any consideration from the Company before any new contract with the Amalgamated was signed. They stated that the P. W. O. C. did not then claim to represent a majority of the employees but that it had a substantial membership and expected to have a majority in the near future and hoped to get in touch with the Company again before any new contract was signed. The plant manager replied that "formal proceedings" were not necessary to secure an audience with representatives of the Company and that the Company was "merely trying to run the plant in best way we knew pos-

sible and likewise keep within the law of the land so far as possible." The next day, October 17, the P. W. O. C. filed with the Regional Director its petition in the present proceeding.

On October 20, 1939, there was a conference between a Field Examiner of the Board and two national representatives of the Amalgamated, at which the Field Examiner notified them that the P. W. O. C. had filed a petition on October 17. On the same day, October 20, the Field Examiner wrote T. J. Lloyd, one of the Amalgamated representatives, that from their conference he understood that the Amalgamated would not consent "to any type of informal procedure; i. e., Consent election or Cross-check" in order to adjust the matter. On the same day the Field Examiner also had a conference with representatives of the Company, informing them of the petition filed by the P. W. O. C. on October 17.

On or about October 24, 1939, the final draft of an unsigned memorandum approved by the members of the Amalgamated was presented to representatives of the Company. The bargaining committee of the Amalgamated was accompanied by counsel and by Lloyd, International vice president. Some of the provisions of the contract were discussed. The Company asked no questions concerning the majority of the Amalgamated, but a statement was made by one member of the bargaining committee of the Amalgamated, and verified by the other members and Lloyd, that the Amalgamated members composed a majority of the employees concerned. No proof of this statement was offered or

requested. No final action was taken at this meeting. [25]

On October 30, 1939, the Director of the P. W. O. C. sent a registered special delivery letter to the Company, stating that its membership now included a majority of maintenance and production employees at the Company's plant and that these members were concerned over rumors of a reported renewal of the contract between the Amalgamated and the Company. The letter closed with a request for a conference within 5 days. This letter was duly received by the Company. No reply of any kind was received by the P. W. O. C.

On November 2, 1939, the Company and the Amalgamated signed papers which they allege constitute a legally binding contract and a bar to this proceeding. The P. W. O. C. contends it is not a legally binding contract. The alleged contract consists of two writings. The first writing, signed by the Amalgamated, is an undated three-page memorandum which was previously discussed with the Company. It sets forth specific provisions appropriate to a bargaining contract, and contains a provision requiring membership in the Amalgamated as a condition of employment. By its terms it is to be in effect until October 24, 1940,⁵ subject to

⁵The expiration date—originally November 2, 1940—was changed to October 24, 1940, because of anticipated pertinent changes in Wage and Hour regulations. For the same reason the contract of November 18, 1938, was drawn to terminate October 24, 1939.

automatic renewal from year to year unless terminated by a 30-day written notice by either party. The second writing dated November 2, 1939, is a letter to the Amalgamated signed by the Company. It acknowledges receipt of a memorandum dated October 24, 1939, and states "it shall be the policy of the Company" to operate under its provisions unless counsel advises otherwise, with specific reference to the closed-shop provision—Section 3 of the memorandum. There was added a stipulation not found in the memorandum. There is nothing in the minutes of the Amalgamated to indicate that the letter was ever read to the members.

On November 20, 1939, the Director and an official of the P. W. O. C. called on the Company to learn whether a contract had been signed with the Amalgamated. They were told that whatever steps the Company had taken had been with the advice of counsel. On December 20, 1939, the P. W. O. C. formally grouped the employees organized by it into a local called Local No. 107, United Packing House Workers of America, which it chartered.

Assuming, without deciding, that the documents exchanged between the Company and the Amalgamated on November 2, 1939, constitute a contract, we find that it is not a bar to a determination of representatives at the present time. This contract, which purports to require membership in the Amalgamated as a condition of employment, was entered into after the P. W. O. C. had filed its petition, after both the Company and the Amalgamated had

been informed of the filing of the petition and that the P. W. O. C. claimed to represent a majority [26] of the Company's employees, and at a time when the P. W. O. C., as we find below in Section VI, had obtained over 300 authorization cards purportedly signed by employees of the Company, a number sufficient to rebut, as we find in Section VI below, the Amalgamated's showing of majority representation at the time the contract was executed and any presumption of continuing majority representation arising by virtue of the Amalgamated's victory in the consent election of October 1938.⁶

IV. The Effect of the Question Concerning Representation Upon Commerce.

We find that the question concerning representation which has arisen, occurring in connection with the operations of the Company, Section I above, has a close, intimate, and substantial rela-

⁶See *Matter of Southern Chemical Cotton Company and Textile Workers Organizing Committee*, 3 N. L. R. B. 869. In this case we said:

If, as in this case, an employer enters into an agreement with one of two labor organizations at a time when both are claiming the right of exclusive representation, we must hold that the agreement cannot bar our conducting an election, unless we are convinced that at the time of its execution the labor organization with which it was made represented a majority of the employees.

tion to trade, traffic, and commerce among the several States, and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The Appropriate Unit

The Company and the unions agree that there should be included in the bargaining unit all employees of the Company on the plant pay roll at its Los Angeles plant, excluding supervisory employees, subforemen, deputized officers, all other watchmen wherever located, drivers, and Kern County employees; that whether on plant or office pay roll, all department superintendents, timekeepers, time-study men, and the hide take-up gang, are to be excluded; and that no persons on the office pay roll are to be included in the unit.

The only difference between the unions concerns receiving clerks, departmental clerks, route clerks, checkers, scalers, and shipping clerks. The P. W. O. C. contends that they should be excluded from the unit, and the Amalgamated contends that they should be included. These six classes of employees were eligible to vote in the consent election held in October 1938, to which agreement the Amalgamated and a local of the P. W. O. C. were parties. Since that election these employees have been included in the unit of employees concerning whom the Company and the Amalgamated have had bar-

[27] gaining relations.⁷ Under these circumstances we see no reason for excluding them from the bargaining unit.

We find that all employees of the Company on the plant pay roll at its Los Angeles plant, including receiving clerks, departmental clerks, route clerks, checkers, scalers, and shipping clerks, but excluding supervisory employees, subforemen, department superintendents, timekeepers, time-study men, deputized officers, all other watchmen wherever located, drivers, Kern County employees, the hide take-up gang, and all employees whose names appear on the office pay roll, constitute a unit appropriate for the purposes of collective bargaining, and that said unit will insure to employees of the Company the full benefit of their right to self-organization and to collective bargaining and otherwise effectuate the policies of the Act.

VI. The Determination of Representatives

The secretary-treasurer of the Amalgamated testified that on November 1, 1939, it represented 587 employees in the appropriate unit, of whom 530 were Amalgamated members in good standing. The P. W. O. C. introduced in evidence 369 member-

⁷These employees were covered by the documents exchanged between the Company and the Amalgamated in November of 1938 and 1939, which we have assumed, without deciding, constituted contracts.

ship cards.⁸ Of these cards, 18 were signed after November 1, 1939, and 15 were signed by persons not employed during the pay-roll period of October 31, 1939. There thus remain 336 cards signed by employees in the appropriate unit on or before November 2, 1939.⁹ About 300 signers of P. W. O. C. membership cards are also claimed as members by the Amalgamated. Disregarding the approximately 300 employees who are claimed as members by both the P. W. O. C. and the Amalgamated, there remain of the 587 employees whom the Amalgamated claims to represent about 287 who are not also claimed as members by the P. W. O. C.

According to the testimony of the plant superintendent there were about 675 employees in the appropriate unit on November 1, 1939. The plant pay roll of October 21, 1939, however, shows a total of 857 names. We are unable to determine how many of these were in the appropriate unit, since we are unable to decipher many of the marks designating the work classifications of the employees on

⁸Twenty-seven additional cards were marked for identification, but they were not introduced in evidence because the P. W. O. C. had agreed with the signers not to divulge their names.

⁹Some undated cards were, according to his testimony, dated by the P. W. O. C. Director the day they came into his hands and, therefore, do not necessarily bear the date when they were signed. There is testimony to the effect that a few cards were signed in 1938 before the consent election.

this list. We can determine that at least 34 employees were not in the unit, leaving 823. It is entirely possible that a substantial number of [28] these 823 employees were not in the unit. In any event, whether there were 675 or 823 employees in the appropriate unit on November 1, 1939, it is plain that the Amalgamated has not shown that it represented a majority of the employees on November 1, 1939, in view of the overlapping membership claim and showing of the P. W. O. C. On the other hand, the P. W. O. C. has made a sufficient showing to rebut both the showing of majority representation by the Amalgamated and any presumption, arising by virtue of its victory in the consent election of October 1938, of continuing majority representation by the Amalgamated on November 2, 1939.

We find that an election by secret ballot is necessary to resolve the question concerning representation among the employees of the Company at its Los Angeles, California, plant and we shall direct the holding of such an election. We will direct that those eligible to vote in the election shall be those employees in the appropriate unit who were employed during the pay-roll period immediately preceding the date of this Direction of Election, including employees who did not work during that pay-roll period because they were ill or on vacation or were then or have since been temporarily laid off, and excluding those who have since quit or been discharged for cause. The P. W. O. C. requested

that the name of its local union should appear on the ballot. This request is hereby granted.

Upon the basis of the above findings of fact and upon the entire record in the case, the Board makes the following:

CONCLUSIONS OF LAW

1. A question affecting commerce has arisen concerning the representation of employees of Cudahy Packing Company, Los Angeles, California, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

2. All employees of the Company on the plant pay roll of its Los Angeles, California, plant, including receiving clerks, departmental clerks, route clerks, sealers, checkers, and shipping clerks, but excluding supervisory employees, subforemen, department superintendents, timekeepers, time-study men, deputized officers, all other watchmen wherever located, drivers, Kern County employees, hide take-up gang, and all employees whose names appear on the office pay roll, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the National Labor Relations Act.

DIRECTION OF ELECTION

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, [29] and pursuant to Article III, Section 8, of National

Labor Relations Board Rules and Regulations—
Series 2, as amended, it is hereby

Directed that, as part of the investigation authorized by the Board to ascertain representatives for the purposes of collective bargaining with Cudahy Packing Company, Los Angeles, California, an election by secret ballot shall be conducted as early as possible, but not later than thirty (30) days from the date of this Direction of Election, under the direction and supervision of the Regional Director for the Twenty-first Region, acting in this matter as agent for the National Labor Relations Board, and pursuant to Article III, Section 9, of said Rules and Regulations, among all employees of the Company on the plant pay roll at its Los Angeles plant, who were employed during the pay-roll period immediately preceding the date of this Direction of Election, including receiving clerks, departmental clerks, route clerks, scalers, checkers, and shipping clerks, and including employees who did not work during that pay-roll period because they were ill or on vacation or were then or have since been temporarily laid off, but excluding supervisory employees, subforemen, department superintendents, timekeepers, time-study men, deputized watchmen, all other watchmen wherever located, drivers, Kern County employees, the hide take-up gang, and all employees whose names appear on the office pay roll, and those who have since quit or been discharged for cause, to determine whether said employees desire to be represented by United

Packing House Workers of America, Local No. 107, C. I. O., or Amalgamated Meat Cutters and Butcher Workmen of North America, A. F. of L., Local No. 207, for the purposes of collective bargaining, or by neither.

[Endorsed]: Filed Jul. 29, 1940. [30]

EXHIBIT "B"

United States of America
Before the National Labor Relations Board
Case No. R-1718

In the Matter of
CUDAHY PACKING COMPANY

and

PACKING HOUSE WORKERS ORGANIZING
COMMITTEE, C. I. O.

CERTIFICATION OF REPRESENTATIVES
June 6, 1940

On April 16, 1940, the National Labor Relations Board, herein called the Board, issued a Decision and Direction of Election in this proceeding.¹ Pursuant to the Direction of Election, an election by secret ballot was conducted on May 16, 1940, under the direction and supervision of the Regional

¹22 N. L. R. B. No. 83.

24 N. L. R. B., No. 32.

Director for the Twenty-first Region (Los Angeles, California). On May 17, 1940, the Regional Director, acting pursuant to Article III, Section 9, of National Labor Relations Board Rules and Regulations—Series 2, as amended, issued and duly served on the parties an Election Report. No objections to the conduct of the ballot or the Election Report have been filed by any of the parties.

As to the balloting and its results, the Regional Director reported as follows:

1. Total number eligible	847
2. Total number of ballots cast.....	721
3. Total number of challenged ballots.....	2
4. Total number of blank ballots.....	2
5. Total number of void ballots.....	0
6. Total number of valid ballots cast.....	717
7. Total number of votes for Amalgamated Meat Cutters and Butcher Workmen of North America, Local 207, affiliated with A. F. L.	285
8. Total number of votes for United Packing House Workers of America, Local 107, affiliated with the C. I. O.....	410
9. Total number of votes for neither.....	22

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of National Labor Relations Act, 49 Stat. 449, and pursuant to Article III, Sections 8 and 9, of National Labor Relations Board Rules and Regulations—Series 2, as amended,

It is hereby certified that United Packing House Workers of America, Local No. 107, C. I. O., has been designated and selected by a majority of all employees of Cudahy Packing Company, Los Angeles, California, on the plant pay roll of its Los Angeles, California, plant, including receiving clerks, departmental clerks, route clerks, scalers, checkers, and shipping clerks, but excluding supervisory employees, [31] subforemen, department superintendents, timekeepers, time-study men, deputized officers, all other watchmen, wherever located, drivers, Kern County employees, hide take-up gang, and all employees whose names appear upon the office pay roll, as their representative for the purposes of collective bargaining and that, pursuant to Section 9 (a) of the National Labor Relations Act, United Packing House Workers of America, Local No. 107, C. I. O., is the exclusive representative of all such employees for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

[Endorsed]: Filed Jul. 29, 1940. [32]

[Title of District Court and Cause.]

NOTICE OF MOTION TO DISMISS
COMPLAINT

Please take notice that the annexed motion to dismiss the complaint will be brought on before

this Court on July 30, 1940, at 10 o'clock A. M. or as soon thereafter as can be heard, in the Court Room of the Honorable Leon R. Yankwich, in the United States Post Office Building, in the City and County of Los Angeles, State of California.

WM. R. WALSH,

Regional Attorney 21st Region, appearing for Defendant Walter P. Spreckels, individually, and as Regional Director, 21st Region of the National Labor Relations Board, 808 U. S. Post Office & Court House, Los Angeles, California.

To: Messrs. W. I. Gilbert

and

Redmond S. Brennan
Attorneys for Plaintiff,
939 Rowan Building
Fifth and Spring Streets,
Los Angeles, California.

[Endorsed]: Filed Jul. 29, 1940. [33]

[Title of District Court and Cause.]

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO DISMISS

I. The complaint must be dismissed for lack of jurisdiction of an indispensable party.

A. The matters sought to be enjoined are those which only the National Labor Relations Board

can perform and not this defendant Spreckels, as a subordinate agent.

National Labor Relations Board Section 9(c)
Rules and Regulations of the National Labor
Relations Board—Series 2, as amended, Ar-
ticles II and IV.

B. The District Court has no jurisdiction over the National Labor Relations Board, as no suit can be brought against any branch of the United States Government without special Act of Congress.

National Labor Relations Act, Sections 3 and 5
Jamestown Veneer & Plywood Corp. v. Na-
tional Labor Relations Board, 13 F. Supp.
405 (N.D.N.Y.);

New England Transportation Co. v. Myers,
15 Supp. 807. (D. Mass).

And were such suit even capable of being brought it would only be in the District of Columbia, where the Board is officially located.

National Labor Relations Act, Sections 3
and 5 [34]

Jamestown Veneer & Plywood Corp. v. Na-
tional Labor Relations Board, 13 F. Supp.
405 (N.D.N.Y.);

New England Transportation Co. v. Myers,
15 Supp. 807 (D. Mass.).

C. The complaint must therefore be dismissed for want of jurisdiction over an indispensable party.

Moore v. Anderson, 68 F. (2d) 191, 193 (CCA 9, 1933);

Raichie v. Federal Reserve Bank, (C.C.A. 2) 34 F. (2d), 910, 916;

Generich v. Ritter, 265 U. S. 388, 391-2;

Webster v. Fall, 266 U. S. 507;

Alcohol Warehouse Corp. v. Canfield (C. C. A. 2) 11 Fed. (2d) 214, 215;

National Conference on Legalizing Lotteries v. Goldman, 85 F. (2d) 66, 67 (C. C. A. 2, 1936);

Association for Legalizing American Lotteries v. Goldman, 85 F. (2d) 67 (C. C. A. 2, 1936); .

Golden States Advertising Co. v. Goldman, 85 F. (2d) 68 (C. C. A. 2, 1936);

Warner Valley Stock Co. v. Smith, 165 U. S. 28.

II. All the powers, duties and functions of the defendant Spreckels in the proceeding complained of have been fully discharged and performed, and there is nothing else which he can do or perform. The bill must therefore be dismissed on the ground of mootness.

National Labor Relations Act, Section 9
Rules and Regulations of the National Labor
Relations Board, Articles II, Article IV.

III. The United States District Court is without jurisdiction of the subject matter of the bill of complaint herein.

A. Under the terms and provisions of the National Labor Relations Act, the matters set forth in the bill of complaint are within the exclusive jurisdiction of the National Labor Relations Board in the first instance, subject to review, after the rendition of a final order of the Board, by the United States Circuit Court of Appeals.

National Labor Relations Act, Section 9 (c) and (d); Section 10 (a), (b), (c), (d), (e), and (f), 29 U. S. C. A., §159 (c) and (d), §160 (a), (b), (c), (d), (e) and (f); *Myers v. Bethlehem Shipbuilding Corp., Ltd.*, 303 U. S. 41; [35]

Newport News Shipbuilding & Drydock Co. v. Bennet P. Schauffler, et al., 303 U. S. 54; *Carlisle Lumber Co. v. Hope* (C.C.A. 9) 83 F. (2d) 92;

Bradley Lumber Co. of Ark. et al. v. National Labor Relations Board, 84 F. (2d) 97 (C.C.A. 5), cert. den. 299 U. S. 559;

E. I. DuPont de Nemours & Co. and Dupont Rayon Co. v. Boland, 85 F. (2d) 12 (C. C. A. 2);

B. This Court has passed on this question in the following cases:

Bethlehem Shipbuilding Corp. v. Nylander, 14 F. Supp. 201 (Stephens, J.);

Aircraft Workers Union, Inc. v. Nylander
(S. D. Calif. Yankwich, J.) Decided August
18, 1937, No. 1230-M;

Northrup Corporation v. Nylander, (S. D.
Calif. Yankwich, J.) Decided August 18,
1937, No. 1235-H;

Amalgamated Meat Cutters & Butcher Work-
men of North America, Local No. 207 v.
National Labor Relations Board and Wal-
ter P. Spreckels, Regional Director, 21st
Region, (S. D. Calif. Harrison, J.) De-
cided July 12, 1940, No. 1052-H;

The last of these cases was sought to be main-
tained on a bill of complaint identical with the
present bill except that the Board was made a
party defendant and Spreckels was sued as direc-
tor only.

IV. The United States District Court has no
jurisdiction in equity to enjoin proceedings of the
National Labor Relations Board under the Na-
tional Labor Relations Act.

A. The bill of complaint fails to set forth facts
showing that the plaintiff is threatened with irre-
parable damage cognizable in equity as a result of
the proceedings sought to be enjoined.

Howard Myers, et al. v. Bethlehem Ship-
building Corp., Ltd., 303 U. S. 41;

Newport News Shipbuilding & Dry Dock
Co. v. Bennet F. Schauffler, et al., 303
U. S. 54;

Carlisle Lumber Co. v. Hope (C. C. A. 9)
83 F. (2d) 92; [36]

Bradley Lumber Co. of Ark., et al. v. Na-
tional Labor Relations Board, 84 F. (2d)
97 (C. C. A. 5), cert. den. 299 U. S. 559;

E. I. DuPont de Nemours & Co. and Du-
pont Rayon Co. v. Boland, 85 F. (2d) 12
(C. C. A. 2);

Heller Bros. Co. v. Lind, et al., 86 F. (2d)
862 (Ct. App. D. C.), cert. den. 300 U. S.
672.

B. The procedure of the National Labor Rela-
tions Act, by its terms, affords a full, adequate,
and complete administrative remedy for any of the
matters complained of in the bill, which plaintiff
has failed to exhaust.

Howard Myers, et al. v. Bethlehem Ship-
building Corp., Ltd., *supra*;

Newport News Shipbuilding & Drydock Co.
v. Bennet F. Schauffler, et al., 91 F. (2d)
730 (C. C. A. 4), affirmed by Supreme
Court, 303 U. S. 54;

Carlisle Lumber Co. v. Hope, *supra*;

Heller Bros. Co. v. Lind, et al., *supra*;

Bradley Lumber Co. of Ark., et al. v. Na-
tional Labor Relations Board, *supra*.

C. The certification is not a command or order
of any kind, and is not properly the subject of an
injunction. *Los Angeles R. R. Co. v. United States*,
273 U. S. 299. Should it later become the basis of

an order against the Cudahy Packing Company under Section 10 of the Act, the plaintiff would have full opportunity to intervene and contest the validity of the certification before the Board under Section 10 (b) and (c) of the Act, and thereafter before the United States Circuit Court of Appeals, on review under Section (10) (e) or (f) of the Act. The plaintiff therefore has a full, adequate and complete remedy under the Act for all of the matter complained of.

National Labor Relations Act, Section 9 (c),
9 (d), Section 10 (b), (c), (e) and (f);
Howard Myers, et al., v. Bethlehem Ship-
building Corp., Ltd., supra; [37]
National Labor Relations Board v. Jones &
Laughlin Steel Corp., 301 U. S. 1;
Carlisle Lumber Co. v. Hope, supra;
E. I. DuPont de Nemours & Co. and Dupont
Rayon Co. v. Boland, supra.

Respectfully submitted,

WM. R. WALSH,

Regional Attorney 21st Region, appearing for de-
fendant Walter P. Spreckels, Regional Direc-
tor, 21st Region, 808 U. S. Post Office & Court
House, Los Angeles, California.

[Endorsed]: Filed Jul. 29, 1940. [38]

In the District Court of the United States, Southern District of California, Central Division

No. 1076 Y Civil

AMALGAMATED MEAT CUTTERS &
BUTCHER WORKMEN OF NORTH
AMERICA, LOCAL NO. 207,

Plaintiff,

vs.

WALTER P. SPRECKELS, individually and as
Regional Director, 21st Region, of the National
Labor Relations Board,

Defendant.

DECISION

Yankwich, Leon R., Judge.

The court is of the view that the complaint does not state a claim for relief within the jurisdiction of this court.

No action has been taken by the Regional Director of the National Labor Relations Board which threatens the contractual rights of the plaintiff, or justifies our interference through injunctive process.

More the National Labor Relations Act provides an exclusive method for review of the actions of the Board.

So that even if the action of this court could reach the board through a subaltern, we would be without jurisdiction.

The motion to dismiss will therefore be granted, [39] without leave to amend.

Dated this 3rd day of August, 1940.

LEON R. YANKWICH,
Judge, District Court of the United States, South-
ern District of California.

Counsel notified.

[Endorsed]: Filed Aug. 3, 1940. [40]

In the District Court of the United States, South-
ern District of California, Central Division

No. 1706 Y Civil

AMALGAMATED MEAT CUTTERS &
BUTCHER WORKMEN OF NORTH
AMERICA, LOCAL NO. 207,

Plaintiff,

vs.

WALTER P. SPRECKELS, individually and as
Regional Director, 21st Region, of the National
Labor Relations Board,

Defendant.

DECREE

GRANTING THE MOTION OF WALTER P.
SPRECKELS, INDIVIDUALLY AND AS
REGIONAL DIRECTOR OF THE 21ST
REGION OF THE NATIONAL LABOR RE-
LATIONS BOARD, TO DISMISS AND DIS-
MISSING THE BILL OF COMPLAINT.

This cause came on to be heard on the applica-
tion of the plaintiff for a temporary injunction,

and on the motion of the defendant, Walter P. Spreckels, individually, and as Regional Director of the Twenty-first Region of the National Labor Relations Board, to dismiss the bill of complaint on the ground, first, that this is a suit to enjoin the Board and this defendant Spreckels from conducting a proceeding for the investigation and certification of representatives pursuant to Section 9(c) of the National Labor Relations Act, in which proceeding the said Board has already, after investigation, issued its certification of representatives and there is nothing further to be done by the Board or said defendant Spreckels in said proceeding; secondly, that if there were something further to be done this Court has no jurisdiction to enjoin the Board or its agents from the performance of their duties under the National Labor Relations Act; thirdly, the plaintiff has a full, adequate, and complete remedy under the procedure of the National Labor Relations Act for any of the matters complained of in the bill of complaint; and fourthly, that this suit is to enjoin acts of the Board or such acts of defendant Spreckels as he can only [41] perform under the orders and directions of the Board, and therefore the absence of jurisdiction of this Court over said Board requires the dismissal of the bill of complaint for want of an indispensable party, and

It appearing to this Court that this is a suit to enjoin said defendant Spreckels, individually and as Regional Director of the 21st Region of the Na-

tional Labor Relations Board, from conducting a certain proceeding for the investigation and certification of representatives pursuant to Section 9(c) of the Act, and that this Court is of the view that the complaint does not state a claim for relief within the jurisdiction of the Court, and that no action has been taken by the Regional Director of the National Labor Relations Board which threatens the contractual rights of the plaintiff or justifies the Court's interference through injunctive process, and that the National Labor Relations Act provides an exclusive method for review of actions of the Board, and further that this being in reality a suit to enjoin the acts of the Board or such acts of defendant Spreckels as he can only perform under the orders and directions of the Board, the Board is an indispensable party, absence of jurisdiction over whom requires a dismissal of the bill of complaint, now therefore,

On reading and filing said bill of complaint, motion to dismiss, and after hearing argument of counsel, and due deliberation having been had, it is

Ordered, adjudged, and decreed:

(1) That the motion of Walter P. Spreckels, individually, and as Regional Director of the 21st Region of the National Labor Relations Board, to dismiss the bill of complaint, be and the same is hereby granted, and the said bill of complaint is hereby dismissed without leave to amend, with costs;

(2) That application of the plaintiff for temporary injunction be and the same is hereby denied.

Dated this 13th day of August, 1940.

LEON R. YANKWICH,
United States District Judge.

No objection as to form

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Attorneys for Plaintiff.

Judgment entered Aug. 15, 1940.

Docketed Aug. 15, 1940. Book C. O. #3, page 495.

R. S. ZIMMERMAN,

Clerk.

By MURRAY E. WIRE,

Deputy.

[Endorsed]: Filed Aug. 15, 1940. [42]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given, that Amalgamated Meat Cutters & Butcher Workmen of North America, Local No. 207, plaintiff above named, hereby appeals to the Circuit Court of Appeals, for the Ninth Circuit, from the decision of the court rendered herein on August 3, 1940, and from the decree granting the motion of Walter P. Spreckels,

individually, and as Regional Director, 21st Region, of the National Labor Relations Board, to dismiss, and dismissing, the bill of complaint, rendered on the 13th day of August, 1940.

Dated: October 22, 1940.

W. I. GILBERT,
939 Rowan Building,
Los Angeles, California.
REDMOND S. BRENNAN,
Dwight Building,
Kansas City, Mo.

By W. I. GILBERT,
Attorneys for Plaintiff
and Appellant.

Received copy of the within Notice this 22 day of October, 1940.

WM. R. WALSH,
Attorney for Walter P. Spreckels, Ind. and as
Regional Director, 21st Region, N. L. R. B.

[Endorsed]: Filed Oct. 22, 1940. [43]

[Title of District Court and Cause.]

STATEMENT OF POINTS TO BE RELIED
UPON ON APPEAL

Comes now the above plaintiff and states to the court that the following points will be relied upon on appeal of this case:

I.

That an officer of the Federal Government, or a Board thereof, acting outside of the scope of authority conferred upon them by the statute creating the office, or Board, can be enjoined in a proper case.

II

The acts of an officer of the National Labor Relations Board, acting in a field and in a manner not covered by the National Labor Relations Act, do not fall within the review provisions of the National Labor Relations Act.

III.

That acts done by an officer of the National Labor Relations Board by color of office only, but in fact in contemplation of law in his private capacity, and not contemplated or authorized by the National Labor Relations Act, can be enjoined by an original action in the United States District Courts, and that [44] as to such acts the National Labor Relations Act provides no review procedure whatever.

IV.

In the case of an abuse of the power of the National Labor Relations Board, where it or its officers act by color of office only, the District Courts of the United States have original jurisdiction to give relief.

V.

Where a labor organization has been designated by the National Labor Relations Board as the duly constituted bargaining agent, and, pursuant to such

designation, makes a contract with the employer, the National Labor Relations Board is thereafter powerless, while such contract is in force and effect, to designate a new and different bargaining agent to deal on behalf of the employees with the employer, and that such an attempt is in excess of the authority conferred by statute upon the National Labor Relations Board, and constitutes the denial of due process of law under the 14th Amendment of the United States Constitution, and also an impairment of the obligation of a contract in violation of the 5th amendment to the United States Constitution.

VI.

That the interference by a third party with contractual rights existing between a labor organization and its members on the one hand, and an employer on the other, can be prevented by injunctive process where a plain, speedy and adequate remedy at law is not available.

Dated: October 22, 1940.

W. I. GILBERT

REDMOND S. BRENNAN

By W. I. GILBERT

Attorneys for Plaintiff and
Appellant.

Received copy of the within Designation of Points this 22 day of October, 1940.

WM. R. WALSH

Attorney for Walter P.
Spreckels, Ind. & as Reg. Director
21st Region N. L. R. B.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, R. S. Zimmerman, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages, numbered 1 to 48, inclusive, contain full, true and correct copies of the Complaint; Order to Show Cause; Points and Authorities in Support of Order to Show Cause; Motion to Dismiss Complaint; Notice of Motion to Dismiss Complaint; Points and Authorities in Support of Motion to Dismiss; Decision; Decree; Notice of Appeal; Statement of Points upon Which Appellant Will Rely on Appeal; Bond on Appeal; Designation of Contents of Record on Appeal, which constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I do further certify that the Clerk's fee for comparing, correcting and certifying the foregoing record amounts to \$8.65, and that same has been paid me by the Appellant.

Witness my hand and the seal of said District Court, this 5th day of November, A. D. 1940.

[Seal]

R. S. ZIMMERMAN,

Clerk

By EDMUND L. SMITH

Deputy Clerk [49]

[Endorsed]: No. 9681. United States Circuit Court of Appeals for the Ninth Circuit. Amalgamated Meat Cutters & Butcher Workmen of North America, Local No. 207, Appellant, vs. Walter P. Spreckels, individually, and as Regional Director, 21st Region, of the National Labor Relations Board, Appellee. Transcript of Record upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

Filed November 12, 1940.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of Appeals for
the Ninth Circuit

No. 9681

AMALGAMATED MEAT CUTTERS &
BUTCHER WORKMEN OF NORTH AMER-
ICA, LOCAL NO. 207,

Plaintiff, and Appellant

v.

WALTER P. SPRECKELS, individually, and as
Regional Director, 21st Region, of the National
Labor Relations Board,

Defendant, and Respondent

STATEMENT OF POINTS TO BE RELIED
UPON ON APPEAL

Comes now the above named appellant and states
to this Honorable Court that on appeal it will rely

upon the same points which have heretofore been filed in the District Court of the United States, Southern District of California, Central Division, and which are a part of this record on appeal.

Dated: November 7, 1940.

W. I. GILBERT

REDMOND S. BRENNAN

By [Illegible]

Attorneys for Appellant

Received copy of the within this 8th day of November, 1940.

WM. R. WALSH

Attorney for N. L. R. B.

[Endorsed]: Filed Nov. 12, 1940. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

DESIGNATION OF PARTS OF RECORD TO
BE PRINTED

To the Clerk of the United States Circuit Court of Appeals, for the Ninth Circuit:

Appellant hereby designates, for the printing of the record, the following parts of the certified transcript of the record on appeal:

- (1) Complaint, together with exhibit attached thereto;
- (2) Order to show cause;
- (3) Notice of motion to dismiss complaint;

(4) Motion to dismiss complaint, together with all exhibits attached thereto;

(5) Decision;

(6) Decree (Judgment)

(7) Notice of appeal;

(8) Appellant's points to be relied upon on appeal (District Court);

(9) Statement of points to be relied upon on appeal (Circuit Court);

(10) This designation of parts of record to be printed.

Dated: November 7, 1940.

W. I. GILBERT

REDMOND S. BRENNAN

By [Illegible]

Attorneys for Appellant

Received copy of the within this 8th day of November, 1940.

WM. R. WALSH

Attorney for N. L. R. B.

[Endorsed]: Filed Nov. 12, 1940. Paul P. O'Brien, Clerk.

